IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 15 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAHIBAG ENTER PVT.LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR RK PATEL for MR KC PATEL for Petitioner

MR AKIL QURESHI with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the

assessee, the following questions are referred for our opinion in respect of assessment year 1980-81 :-

1. Whether on the facts and in the circumstances of the case the assessee was entitled to claim deduction of Rs.22,500/- and Rs.32,536/- u/s. 37 of the I.T. Act, 1961 ?

2. Whether on the facts and in the circumstances of the case the assessee was entitled to claim deduction allowed to it u/s. 80K of the I.T. Act, 1961 ?

2. As far as question No. 1 is concerned, the same arises from the following facts :-

The aforesaid amounts in question were paid as professional fees -- Rs.22,500/- to Mr BR Shah, Advocate for Company Petition and affidavits filed in this Court and conference held in respect of the scheme of amalgamation; and Rs.32,356/- paid to Crawford Baley & Co. for drafting the scheme of amalgamation and affidavits including fees of counsel. The assessee claimed these expenses as revenue expenses. The Income-tax Officer and the CIT (Appeals) disallowed the said claims on the ground that the expenses were capital in nature since they were incurred for the purpose of amalgamation which confer an enduring benefit on the assessee. The Tribunal also confirmed the said view on the ground that in a similar case of New Commercial Co. Ltd., this Court had decided the issue against the assessee by holding that the scheme of amalgamation brings permanent benefit of enduring nature to the assessee and, therefore, it is a capital expenditure.

3. At the hearing of the reference, the learned counsel for the parties agree that the controversy is now concluded in favour of the assessee in view of the decision of the Apex Court in CIT vs. Bombay Dyeing and Manufacturing Co. Ltd., (1996) 219 ITR 521 where Their Lordships held that the expenditure incurred towards professional charges of the solicitors' firm for the services rendered in connection with the amalgamation was in the course of carrying on of the assessee's business and, therefore, deductible as a revenue expenditure.

In view of the above decision, the two disputed items of expenditure will have to be treated as revenue expenditure.

4. As far as question No. 2 is concerned, the learned counsel for the parties agree that the controversy raised herein is concluded against the assessee by the decision of this Court in CIT vs. Sarabhai & Sons, (1995) 211 ITR 20 wherein this Court held that in computing deductions allowable under sub-section (1) of section 80M, the net dividend income should be reduced by the deduction allowable to the assessee under section 80K, as provided in sub-section (2) of section 80M.

5. We accordingly answer question No. 1 in the affirmative i.e. in favour of the assessee and against the revenue.

6. Our answer to question No. 2 is as under :-

The Tribunal has erred in holding that deduction under Section 80M is admissible before deduction of the amount admissible under Section 80 K of the Act.

We accordingly answer question No. 2 in the negative i.e. in favour of the revenue and against the assessee.

7. The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-